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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/805,275	03/13/2001	Daniel Bruce Anderson	ANDD100USA	1225
24339	7590	12/05/2003	EXAMINER	
JOEL D. SKINNER, JR. SKINNER AND ASSOCIATES 212 COMMERCIAL ST. HUDSON, WI 54016			ARNOLD III, TROY G	
			ART UNIT	PAPER NUMBER
			3728	

DATE MAILED: 12/05/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/805,275

Applicant(s)

ANDERSON ET AL.

Examiner

Troy Arnold

Art Unit

3728

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 October 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,4-7 and 9-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,4-7 and 9-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1, 4-7 and 9-15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claims 1 and 15, it is unclear whether or not Applicant is positively claiming eyeglasses inside the protective device. The preamble phrases "for a (sic) eyeglasses" and "for eyeglasses" do not constitute a positive recitation and claiming of eyeglasses. For examination purposes, it has been assumed that eyeglasses are NOT being claimed. Claim 12 recites the limitation "said pouch-like body portion" in line 1. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 4-7, 9 and 11-13 are rejected under 35 U.S.C. 102(b) as being anticipated by Seiler. Regarding claim 1, Seiler teaches a protective device for eyeglasses comprising a body portion 30 with an edge defining an ingress/egress opening 32 centrally disposed in the body portion and adapted as claimed, and further comprising a bow aperture (the open end of 35,36) disposed in the body 30 at an end, and which is adapted for extension there through of a bow of eyeglasses to the exterior of the body portion while the remainder of the eyeglasses are in the interior pouch, whereby the body protects the eyeglasses and the bow is accessible on the exterior of the body as claimed. See Fig 6 of Seiler. See the 112-2 rejection above regarding the inclusion of eyeglasses in the instant invention. Regarding the amendments to the claim, a given design of a pair of eyeglasses, with thin bows, and the hinged portion of the bow set back somewhat from the front frame, would clearly fit into Seiler's invention as claimed, and would allow complete extension of the bow through a bow aperture at 35,35, whereby the entire bow would be accessible on the exterior. The bow would be inserted into item 35 or 36 oppositely from the direction shown in Fig 6. Regarding claims 4-6, see column 4, beginning line 19 of Seiler. Regarding claim 7, Seiler teaches a protective device with a body portion 30 with lengthwise and widthwise dimensions and opposing end portions as claimed, an opening 32 centrally disposed with respect to the dimensions with a predetermined area, and wherein the bow aperture (end of 35,36) is disposed in a predetermined position proximate one end portion of the body portion 30 and has an area substantially less than the opening 32 such that only the bow can extend through it. Regarding claims 9 and 11, see items 37-39. Regarding claims 12

and 13, a side portion will serve as a "display portion" of the covering of Seiler, and its color will constitute an aesthetic design.

Claims 10 and 15 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Seiler. Seiler teaches all of the limitations in claims 10 and 15 except the band being elastic. It is submitted that Seiler's band 37 will inherently be elastic to some degree. If not, it would have been obvious to one of ordinary skill in the art at the time the invention was made to make it so for the purpose of ensuring more secure closure of the opening 32. Regarding the amendments to claim 15, Seiler's body portion 30 has an exterior surface and a substantially oval configuration.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Seiler in view of Official Notice. Seiler teaches all the limitations of claim 14 except for the display portion including promotional material. Official Notice is taken that promotional material - brand names, logos, monograms, etc - on objects is old, obvious and well known in a wide variety of arts, including packaging. It would have been obvious to incorporate such material onto the display portion of Eastman's device for the purpose of

personalizing it. Furthermore, such promotional material is essentially an arbitrary design choice, and is therefore not patentable.

Response to Arguments

Applicant's arguments filed 20 October 2003 have been fully considered but they are not persuasive. Contrary to the remarks on page 5, it is submitted that if glasses with thin bows that are hinged away from the front frame part were inserted into Seiler's invention, that it would clearly read on the claims, as noted above. Also, as noted above, Applicant has not definitively claimed eyeglasses as included in his invention. Regarding the remarks on page 6, regardless of the intended use scenarios of the Applicant's invention or those of Seiler, it is submitted that Seiler teaches all of the distinct structural limitations claimed in the claims, or it would have been obvious to modify his invention so that he did, as noted above.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Troy Arnold whose telephone number is 703-305-0621. The examiner can normally be reached on Tuesday-Thursday, 9:30-6pm.

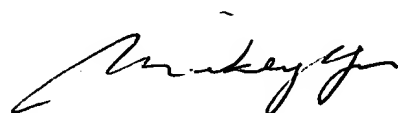
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 703-308-2672. The fax phone number for the organization where this application or proceeding is assigned is 703-872-0302.

Art Unit: 3728

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1148.

Troy Arnold
Examiner
Art Unit 3728

TGA
11/19/03

A handwritten signature in black ink, appearing to read "Mickey Yu", is written above the printed name.

Mickey Yu
Supervisory Patent Examiner
Group 3700